IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2962 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHANTABEN WD/O BALASHANNKAR R.RAVAL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2962 of 1992

MR PJ YAGNIK for Petitioner No. 1

MR. SOMPURA, AGP for Respondent No. 1,3-6

NOTICE SERVED for Respondent No. 2,7

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 05/02/2002

ORAL JUDGEMENT

1. Shantaben wd/o. Balashankar Ramchandra Raval (deceased police constable)-petitioner has filed this

petition praying for a writ of mandamus or any other order on the respondents directing them to immediately grant family pension to the petitioner with effect from 1.10.1977 and pay the arrears to the petitioner within a time which may be laid down by this court. This petition was filed in April, 1992 and this court (Coram: R.K. Abichandani, J) by order dated 6.8.1993 was pleased to admit the matter and issued certain directions.

2. The facts giving rise to this petition are as under:

2.1 It is stated that the petitioner is widow of deceased police constable Balashanker Ramchandra Raval. Her deceased husband was in the service of former British Region and he received his pension from Sub-Treasury Officer, Viramgam, Dist. Ahmedabad. He got pension from the Treasury till 3.9.1952 on which date he expired.

2.2 Thereafter the petitioner states that on 14.7.1990 son Mr. Devendra B. Raval wrote a registered A.D. letter to respondent No. 3 to supply him a certificate of services of his deceased father Balashanker Ramchandra Raval. The petitioner also sent reminders in this regard.

2.3 The petitioner thereafter addressed letters to District Superintendent of Police (Rural), Ahmedabad and to the Special Pension Disbursement Officer, Ahmedabad. She stated that her deceased husband retired from Mandal Police Station as Police Jamadar and was getting pension of Rs. 40/- per month till he died in September, 1952, from Viramgam Treasury. She also made effort to get the record from Viramgam Treasury but she was told that no record is available at Viramgam.

2.4 The petitioner further stated that the Government has issued a Resolution dated 1.1.1972 introducing a life time family pension scheme for the widow of the deceased Government servants and in view of the same she is entitled for family pension.

3. In view of the aforesaid averments, the petitioner submitted that order may be passed granting the petitioner family pension with effect from 1.10.1977. The petitioner has not adduced any evidence to show that she is widow of deceased police constable Balashanker Ramchandra Raval who had retired in the year 1934 and had expired in 1952. Except for the bare statement of the petitioner, no evidence has been furnished by the petitioner to establish her right to get family pension.

In spite of the above position, the respondent authorities made efforts to find out whether late Shri Balashanker Raval, husband of the petitioner was a police constable. In spite of all possible efforts, the respondent authorities could not find any evidence to the effect that the petitioner is a widow of police constable or a Government employee and therefore the petitioner has no right to get family pension or any other benefit from the respondent authorities. In view of the same, the claim of the petitioner could not be entertained. It was further stated that the petitioner is claiming family pension with effect from July, 1990 as the scheme with regard to payment of family pension came into effect in October, 1977 and the petitioner has filed the petition in 1992. Therefore, the petition suffers from the vice of delay and laches. It was further submitted that upon perusal of the record it appears that for the first time in July, 1990 son of the petitioner had addressed letter dated 14.7.1990 to respondent No. 3 the District Superintendent of Police (Rural), Ahmedabad, claiming pension for the petitioner. On perusal of the record no service record of the petitioner's husband could be traced and therefore appropriate reply was given to the petitioner by respondent No. 3. As the record of the petitioner is not traceable even with the office of the Commissioner of Police, Ahmedabad City, the respondent authority has reason to believe that husband of the petitioner was not working as police constable. It was stated that the petitioner has approached this court in 1992 for a cause of action which had arisen in October, 1977, the petition suffers from the vice of delay and laches. It was submitted that the petition involves disputed questions of fact.

4. I have considered the contentions raised by the learned counsel for the petitioner. I have also considered the correspondence ensued between the petitioner and the authorities. I have also considered affidavit in reply and the contentions raised by the learned counsel for the respondents in connection with the judgement and order dated 13.2.1989 in Special Civil Application No. 420 of 1988 and 969 of 1988 delivered by this court (Coram: R.C. Mankad, J). In my view the petition of the petitioner suffers from delay and laches because the husband of the petitioner retired from service in 1934 and he expired in September, 1952 and the petition has been filed in 1992 for a cause of action which had arisen in October, 1977. The authorities have already stated that no records are available by which it can be said that the husband of the petitioner was servicing as police constable. Even the petitioner has

not been able to produce any evidence to show that husband of the petitioner was serving in the police department. The son of the petitioner has addressed a letter to respondent No. 3 for the first time on 14.7.1990, though the husband of the petitioner had retired from service in 1934 and expired in September, 1952. In view of the same, the contention of the learned counsel for the respondents requires to be accepted.

In the result, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)

(pkn)